IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942

No. .....

ALBERTA WEBER DEJONG,

Petitioner,

vs.

RUTH TIETSORT,

Respondent.

BRIEF IN SUPPORT OF PETITION.

Opinion Below.

For the opinion below, see Record 21.

Jurisdiction.

The jurisdictional basis is set out in the Petition, to which reference is made.

Statement of the Case.

The facts are stated in the Petition, to which reference is made.

Specification of Errors.

The Circuit Court of Appeals erred:

1. In holding that the designation of the beneficiary in the insurance policy in question by the description "Mrs. C. S. DeJong, relationship wife" was not a class designation of any wife of the insured, but was a specific designation of his then wife Ruth, who at the time of his death was the wife of another.

2. In holding that the intent of the insured was to benefit the person whom he had divorced prior to his death, rather than his widow; even though the designation "Mrs. C. S. DeJong, relationship wife" accurately described Alberta Weber DeJong his second wife, who became his widow.

3. In refusing to hold, in accordance with the law of Illinois, that a policy of insurance is testamentary in character and speaks as of the time of the death of the insured: and that, therefore, the person who at such time answered the description of "Mrs. C. S. DeJong" and was the widow of the insured should take the fund.

4. In holding that the endorsement of a change of beneficiary was necessary after the marriage of the insured to Alberta Weber in order that the second wife might take the fund, although such second wife was aptly described in the policy by the existing designation of beneficiary as "Mrs. C. S. DeJong, relationship wife."

5. In affirming the judgment of the District Court awarding the fund to the divorced wife of the insured who had married another, rather than to his widow, contrary to the intent of the insured as expressed in the policy.

6. In failing to follow the Illinois law applicable to the questions presented in this case.

Summary of Argument.

In Illinois a policy of insurance is testamentary in character and its construction is similar to that of Wills. The intent of the insured is ascertained from the language of the beneficiary clause of the policy in the light of the conditions surrounding the insured, both at the time the policy was issued and at the time of his death, where a change in such conditions has occurred, but no change has been made in the language of the beneficiary clause.

The Circuit Court of Appeals, having found that the law of Illinois was applicable to the policy, did not follow the cases of *Modern Woodmen of America* v. *Allin,* 301 Ill. 119 and *Pike County Mutual Benefit Assn.* v. *Berry,* 214 Ill. App. 316, which are controlling. These cases hold, in circumstances somewhat similar to those at bar, that the second wife, who becomes the widow, takes the fund, to the exclusion of the wife who was such at the time the policy issued, if the designation of the beneficiary is the class designation of "wife," and such designation remains unchanged after the death or divorce of the wife who was such when the insurance was issued.

In the policy in question, the beneficiary clause designated "Mrs. C. S. DeJong, relationship wife" as the beneficiary. This was a class designation of the wife of the insured, and not a specific designation of the person Ruth, who was then his wife. Each wife of the insured bore the conventional appellation of "Mrs. C. S. DeJong," the initials of the insured being "C. S." Alberta Weber DeJong, the second wife of the insured, who became his widow, was "Mrs. C. S. DeJong" and bore the relationship of wife to the insured at the time of his death. The fund then was payable to her, rather than to Ruth, the first wife, whom the insured had divorced and who married one Tietsort before the death of the insured. Ruth Tietsort

was neither the wife of the insured or even "Mrs. C. S. DeJong" at the time of the death of the insured. She was clearly not within the language of the policy at the time it became payable. Alberta Weber DeJong was within such designation at that time. The award of the fund to the divorced wife, Ruth Tietsort, does violence to the clearly expressed intent of the insured in the policy, and to the strong inference to be drawn from the fact that the insured made no change in the beneficiary clause after his marriage to Alberta Weber. No change was necessary, if the insured intended his widow to take the fund. This had been his intent when he procured the policy and it clearly remained his intent (he taking no action to change the policy) after his divorce of Ruth and his marriage to Alberta.

II.

It has been held that the language of the policy as to endorsement of change refers to other changes than that of beneficiary (*Townsend* v. *Fidelity Co.*, 163 Ia. 713, 723). It is now the law in Illinois (*Novotny* v. *Acacia Mutual Life Ins. Co.*, 287 Ill. App. 361; *Sun Life* v. *Williams*, 284 Ill. App. 222) that if an attempt has been made to change the beneficiary but not completed before the death of the insured, the Insurance Company only can object. Such fact of incompletion does not—contrary to the *Freund* case, —permit the interest of the former beneficiary to "vest," and thereby defeat the expressed intent of the insured. But this question, although discussed by the Court of Appeals, does not arise in this case, because there was no need of a change in the language of the beneficiary clause in question when the insured married his second wife, after the divorce of the first, in order to permit the second wife, who answered to the description contained in the beneficiary clause of "Mrs. C. S. DeJong, wife," to take the fund.

III.

The divorce of the insured of Ruth, his first wife, took her out of the class of "Mrs. C. S. DeJong, relationship wife" and the fund then became payable to the insured's Estate, no change having been made in the policy. Upon his subsequent marriage to Alberta Weber, she became "Mrs. C. S. DeJong" and bore the relationship of wife, and so came within the language of the beneficiary clause and was such at the time of his death. She, becoming the widow of the insured, the policy was payable to her.

Conclusion.

The decision of the Circuit Court of Appeals has disturbed the settled law in Illinois, expressed in the *Allin* and *Berry* cases. Insurance Companies will now be required to go beyond the identity of the person within the class designation in their policies, and will have to determine by other evidence whether such apparent class designation is not, in fact, the designation of some specific person not named in the policy, and not answering to the class designation at the time the policy becomes payable.

PROPOSITIONS OF LAW.

I.

In Illinois a policy of insurance is testamentary in character and speaks as of the time of the death of the insured, when the policy becomes payable. The intent of the insured at the time of the issuance of the policy in question was to provide for his widow. This intent must be carried out with reference to the conditions existing at the time of his death, and the person who at that time was his wife and becomes his widow, takes the fund. The Court of Appeals did not follow this law.

A. The designation by the insured, Carroll S. DeJong, of his beneficiary as "Mrs. C. S. DeJong, relationship wife," was a class designation of any wife of the insured.

B. No change of beneficiary was required to be made or endorsed on the policy after the divorce of the first wife and marriage to the second wife. The words "Mrs. C. S. DeJong, relationship wife" correctly described the second wife of the insured, who being his wife at the time of his death, was entitled to the proceeds of the policy, as the widow of the insured.

Modern Woodmen of America v. *Allin*, 301 Ill. 119.
Pike Co. Mutual Benefit Assn. v. *Berry*, 214 Ill. App. 316.
2 Joyce on Ins. (2nd Ed.) Sec. 830 p. 1821.
In Re Brown's Policy, 19 Times L. R. 98.
Mutual Life Ins. Co. v. *Devine*, 180 Ill. App. 422, 429.

II.

The requirement of an endorsement of change in the policy did not refer to a change of beneficiary. Moreover, such an endorsement, even if necessary in this case, was for the benefit of the Insurance Company, and was waived by the Company when it filed the bill of interpleader.

Townsend v. *Fidelity Co.*, 163 Ia. 713, 723.
Sun Life v. *Williams*, 284 Ill. App. 222.
Novotny v. *Acacia Mutual Life Ins. Co.*, 287 Ill. App. 361.

III.

The divorce of Ruth, the first wife, took her out of the class of "Mrs. C. S. DeJong, relationship wife" of the insured.

Pike Co. Mutual Benefit Assn. v. *Berry*, 214 Ill. App. 316.
Modern Woodmen of America v. *Allin*, 301 Ill. 119.

IV.

The divorce of Ruth, the first wife, left no one in the class of "wife" to take the fund. The fund would then be payable to the Estate of the Insured. Upon his second marriage, the fund became payable to his second wife, Alberta Weber.

Illinois Bankers' Life v. *Collins*, 341 Ill. 548, 550.
Novotny v. *Acacia Mut. Life Ins. Co.*, 287 Ill. App. 361.
Sun Life Assurance Co. v. *Williams*, 284 Ill. App. 222.
Davis v. *Metropolitan Life*, 285 Ill. App. 398, 400.
Pike Co. Mutual Benefit Assn. v. *Berry*, 214 Ill. App. 316.
Modern Woodmen of America v. *Allin*, 301 Ill. 119.

ARGUMENT.

I.

The insured intended to provide for his widow. Under Illinois law the policy should have been so construed.

The policy should have presented no difficulty to the Court below in ascertaining the beneficiary intended by the insured when he designated her as "Mrs. C. S. DeJong, wife." Under Illinois Law, he is presumed to have had in mind at that time the probable conditions existing at the time of his death. His intent to provide for his widow, in case of his accidental death while riding in, or driving an automobile, is clear from the language he used to express it. When the Court of Appeals refused to "attribute to (the insured) an intention of a subsequent marriage to another woman" and so awarded the insurance money to his divorced wife, rather than to his widow, it erroneously held that such an attribution was necessary, in order to award the fund to his widow. This is not the case. That the insured at the time he took out the policy had in mind his then wife, Ruth, is beside the point, in view of the language, "Mrs. C. S. DeJong, wife," which he used to designate his beneficiary, and the fact that he permitted this language to remain unchanged after his divorce of Ruth and his marriage to Alberta Weber.

If the Court of Appeals refuses to attribute to the insured the intention to marry another woman at the time he took out the insurance, and made it payable to "Mrs. C. S. DeJong, wife," it should also refuse to attribute to him the intention at that time, that the insurance money should be payable to a woman whom he should afterwards

divorce, and who would marry another before his death. But such considerations have no part in ascertaining the intent of the insured. He would not be expected to look into the future any further than to foresee his possible death in an auto accident, and the fact that by this calamity he might leave a widow in need of financial aid.

That the wife Ruth would be on his mind at such a time has no relevancy to the decision in this case, in view of the fact that she did not remain his wife until his death. She was not specifically named in the Policy as Ruth DeJong. Had she been, there might have been some difficulty in ascertaining the intent of the insured, had no change been made in the policy. But had she been named as Ruth DeJong in the policy, this, upon the second marriage of the insured would have been a warning to him, when he inspected the policy, to make a change to Alberta, if he wished no question raised about the right of his widow to take the fund. There would be no such need apparent to him, however, in the present case, because the designation of "Mrs. C. S. DeJong, wife" applied to Alberta, his second wife, as accurately as it had applied to Ruth when she was his wife. His initials were "C. S." and describing his wife in the policy as "Mrs. C. S. DeJong" added nothing to the word "wife" by way of specific designation of a particular person. It certainly did not specifically designate Ruth, anymore than it specifically designated Alberta. The identity of the beneficiary is to be sought in the person who was the wife of insured at the time of his accidental death when the insurance money became payable. That person was his widow, Alberta Weber DeJong, also known as "Mrs. C. S. DeJong."

The form of the designation "Mrs. C. S. DeJong, wife" undoubtedly pointed to Ruth, his wife at the time of the issuance of the policy, and as long as she remained his wife. When the Court of Appeals says that "we cannot believe

that the insured meant anyone other than his wife Ruth, when he named the beneficiary as 'Mrs. C. S. DeJong,'" there will be none to disagree. Nor can any dispute arise out of the Court's statement that "at the time of the application, Mrs. C. S. DeJong and Mrs. Ruth DeJong were one and the same person to him." The error of the Court of Appeals arises from the fact that it stops there, and fixes the intent immutably at that point upon the person of Ruth and not upon the designation "wife." It disregards the form of the designation—"Mrs. C. S. DeJong, wife" and ignores the things appearing of record which happened to the insured and to Ruth after the policy was issued.

The form of the designation "Mrs. C. S. DeJong, wife" only became significant when the insured divorced Ruth, and Ruth married another, and the insured married Alberta. Because, by this form, the insured was freed of the necessity of making any change in the designation of beneficiary in the policy. The policy which spoke at the time of the death of the insured certainly described Alberta Weber DeJong as the beneficiary, even if it had just as certainly described Ruth at the time of the issuance of the policy. There is no difficulty and no inconsistency in this. Each was the wife of the insured at some time, and each during that time bore the conventional title of "Mrs. C. S. DeJong." But the immutable intent of the insured as expressed by the unchanged policy was to benefit his widow, whoever she might be. This intent is not only expressed in the policy, but it clearly appears from the fact that after the divorce and the new marriage, the insured made no change in the beneficiary clause. There was no change that needed to be made. The terms of the policy clearly provided for his second wife, who became his widow. To hold otherwise is to do violence to the language of the policy and to the clearly expressed intent of the insured; and is to run counter to the common experi-

ence of life. For it must certainly be considered that the insured, after his second marriage, intended to provide for his new wife rather than the one he had divorced for desertion, and who had married another.

The Court below is clearly in error when it holds that in this case the word "wife" is "merely descriptive of the particular person named." Ruth was not named. The appellation "Mrs. C. S. DeJong" was the conventional one for any wife of the insured, and applied equally to his wife at the time of his death as it had applied to Ruth before her divorce and remarriage. The important words in the designation are "relationship wife." The words "Mrs. C. S. DeJong" added nothing to them, and did not make the designation other than a class designation of the wife of the insured.

In *Modern Woodmen of America* v. *Clara S. Allin et al.*, 301 Ill. 119: a benefit certificate had been issued to Richard A. Allin, payable to his wife and children. At the time the certificate was issued, Allin was married to Arabella M. Allin. Twenty years afterwards, she died, and he married again. His second wife was Clara S. Allin, who survived him. No change in the certificate had been made. The Court say, on page 121:

> "The first and principal question involved is whether the word 'wife' as employed in the Benefit Certificate means only the person who sustained that relation to the member when the certificate was issued, or whether it means the person who sustained that relation at the time of his death."

The Court treat the case as one of first impression and say:

> "We know of no valid objection to a member designating beneficiaries by classes, such as children, or wife and children, as was done in this case. If in-

stead of designation by classes, they had been designated by their individual names, they would take by that description, if living, at the death of the member.

Here one of the classes designated was the member's wife. The person answering that description at the time the certificate was issued, died before the death of the member, and at his death another woman answered that description. * * * He knew no payment could be made until death, and then only to persons answering the description of the beneficiaries. * * * At the time of his death, appellee (widow) answered the description of one of his beneficiaries. We think the language of the certificate must be construed to mean that when he died he wanted his wife to share in the benefits, without regard to whether she was the same person who was his wife when the certificate issued. The construction that the designation of wife meant Arabella M. Allin as much as if she had been specifically named as a beneficiary is in our opinion unwarranted. It was the person who at his death answered the description of the class designated that he desired to protect. * * * The person answering that description (wife) at the death of the member, when the certificate speaks for the first time, is within its protection."

In *Pike County Mutual Life Assn. et al.* v. *Cloa Berry*, 214 Ill. App. 316, a certificate had been issued to George C. Berry designating his wife and children as beneficiaries, although at the time he was unmarried. Subsequently he married Adelle Retalic and there were two children born. Adelle divorced George C. Berry and he thereafter married Cloa and died, leaving Adelle, his divorced wife, and Cloa Berry, his widow, and his two children. On page 319, the Court say:

"The benefit certificate is not payable to Adelle Berry but to the wife and children of the insured.

When the divorce was granted, she ceased to be George C. Berry's wife and she no longer bore the relation to him that is specified in the certificate and no longer had an interest in it. * * *

"In the benefit certificate under consideration, the beneficiaries are not named but described. At the time of its issuance they did not exist. The intended beneficiaries are described as those who at the time of the death of the insured sustain the relation to him of wife and children. If none such were living then to his legal heirs. Who are the beneficiaries are determined at the death of the insured. The insured died leaving Cloa Berry, his wife (his second wife) Thomas R. Berry and Marjorie M. Berry, his children, who are described in the benefit certificate as beneficiaries, and are therefore entitled to the fund the same as if they had been specifically named therein." (p. 320)

In the case of *In re Browne's Policy*, 19 Times L. R. 99, an ordinary life insurance policy was issued payable to the "wife and children" of the insured. The wife living at the time of the issuance of the policy died, and the insured remarried. On the question whether the second wife took any interest under the policy the Court say:

"One is met by the presumption, which is rather of common parlance and common sense than of law, though it has been recognized by legal authority, that a married man speaking of his wife intends his wife at that time, and does not contemplate one whom he may marry after her death. * * * But in construing an instrument intended to make provision for a wife after the husband's death, this seems to lose weight, and is countervailed by the consideration that he in all probability intended to provide for her who survived him, and for that reason stood in need of the provision. * * * I hold that by his wife * * * the settlor intended his surviving wife (if any)."

Upon the further contention that under the Married Women's Property Act such a policy "shall create a trust in favor of the objects therein named," it being urged that a trust was thereby created in the first wife, the Court said, "No one is in the strict sense 'named' in this policy, and the word is not happily used. There is no reason why the trust should not include objects yet unascertained."

In the case at bar, the designation was of the wife of the insured. No particular person was named by the words "Mrs. C. S. DeJong" for each wife of the insured was "Mrs. C. S. DeJong." The person intended to be benefited, therefore, was the widow of the insured.

In 2 Joyce on Insurance (2nd ed.), Sec. 830, p. 1822, the writer discusses the holding in *Day* v. *Case*, 43 Hun. (N. Y.) 179, where a benefit certificate procured by H. M. Case, husband, was made payable to "Mrs. H. M. Case or lawful heirs," and the Court held that the fund should go to the daughter of the first Mrs. Case as her heir, rather than to the second Mrs. Case who was the wife of the insured at the time of his death.

> Joyce says: "We cannot, however, pass over this decision without comment. The object of these societies is to primarily provide for the widow of the member, and the contract should be construed with this fact in mind. In this instance the widow was Mrs. H. M. Case, so designated, who survived the insured, differing from the designation in a Wisconsin case where the beneficiary was named Ida B. Peck, who was the wife. But the court declares that it cannot construe it as meaning 'one person at one time and another at another' ignoring the fact that 'Mrs. H. M. Case' must have always been the one person who was the lawful wife. Suppose if, after his second marriage, the insured had written exactly the same provision in the policy, in

such a case would not the widow without doubt hav
been entitled to the fund? And it is noteworthy tha
it does not appear that there was any requiremen
whatever as to the manner or mode of changing th
designation, from which it may fairly be presumed tha
assured was justified in letting the designation 'Mrs
H. M. Case' stand as it was.

"Again, the courts hold that contracts of this kin
are very similar to a will, and should be construed a
much in accordance with the rules governing wills a
possible. Now, the question arises, Did not the mem
ber, by leaving the designation as it was, and by no
changing the beneficiary mean that his second wif
should be entitled to the fund? A will speaks fro
the death of the testator. There certainly was
'Mrs. H. M. Case' at that time, and it would seem tha
in accordance with this rule, there being a person t
whom this description was then applicable she woul
be entitled to the fund.

"We cannot but believe that in this case, as in a
others of a similar nature, the primary object of th
member is to provide for his widow. We do no
consider the fact that the insured could not reasonabl
have contemplated his second marriage at the time
the issuance of the certificate to be of weight. Th
fact that the insured did subsequently marry, an
then permit his former designation to stand payable t
'Mrs. H. M. Case' seems to clearly evidence an inte
that she should take the fund. In construing the
words the primary object of the society, the wordin
of the certificate and the intent of the member a
seem to reasonably point to Mrs. H. M. Case, th
widow, as the beneficiary."

II.

The requirement of an endorsement of policy change did not refer to a change of beneficiary. Such endorsement, in any event, is for the benefit of the Insurance Company and may be waived by it. But, no change was necessary in the policy in this case.

The Court of Appeals erroneously held that if "the insured desired to change the beneficiary, he had to comply with the terms of the policy, and since no other selection of a beneficiary was made in the manner provided by the policy before the insured died, the beneficiary whose selection was valid had a vested interest in the fund." This ignores the form of the designation of the beneficiary in this case. No change in the policy was needed in order to designate the second wife of the insured. She answered perfectly to the description then in the policy of "Mrs. C. S. DeJong, wife." The Insurance Company certainly would not be concerned with the question whether the first wife was named Ruth and the second Alberta, for the only question with which it was really concerned was whether at the time of the death of the insured, when the policy became payable, there was a person answering to the description of "Mrs. C. S. DeJong" who was the wife of the insured. To such a person the proceeds were payable, and to no other, even if at one time a different person had answered to that description. To hold otherwise, as the Court below has done, is to make uncertain what before was certain, and to put the burden upon the insurance companies of inquiring in all cases of class designation, such as the instant case whether or not the person answering to the designation at the time of the death of the insured is the same person who answered to it when the policy was issued. This overrules the *Allin* case (301 Ill. 119) and the *Berry* case (214 Ill. App. 316) which had laid

down the rule to be followed in class designation cases; and opens the door to much litigation.

These Illinois cases are directly in point and should have controlled the decision of the Court of Appeals in this case. It was irrelevant to discuss, as the Court below did, the alleged requirements for change of beneficiary, and the doctrine of the *Freund* case, that where an ineffective attempt has been made to change the beneficiary before the death of the insured, the insurance company cannot affect the alleged right of the first beneficiary to the fund, which, it was said in the *Freund* case, "vests" at that time. Yet, as the Court of Appeals indicates by its citation of the case of *Sun Life* v. *Williams,* 284 Ill. App. 222 (in which case the Supreme Court of Illinois denied certiorari) the *Freund* case is not now being followed in Illinois. This also appears from the decision in the later case of *Novotny* v. *Acacia Mutual Life Ins. Co.,* 287 Ill. App. 361, which holds that the provision as to endorsement of change is for the benefit of the Insurance Company only, and may be waived by it, so that the failure to complete an attempt to make a change of beneficiary, desired and expressed by the insured, cannot be defeated by the first named beneficiary on the highly artificial theory of a "vesting" of his interest at the death of the insured.

In *Townsend* v. *Fidelity Co.,* 163 Ia. 713, 723, it was held that a provision as to endorsement similar to the one at bar, did not refer to a change of beneficiary, but to other changes in the policy.

All of which is beside the point in this case, for no notice of change of beneficiary was required to be made here, after the divorce and second marriage, in order to permit the widow to take the fund, the widow being the one intended from the time of the issuance of the policy, and such intention being clearly expressed in the policy.

III.

The divorce of Ruth, the first wife, took her out of the class of "Mrs. C. S. DeJong, wife" of the insured.

When the first wife, Ruth, who answered to the description of the beneficiary in the policy as wife of the insured was divorced by Carroll S. DeJong, she was no longer in the class of "Mrs. C. S. DeJong, wife." As she did not answer to that description at the time of the death of the insured, when the fund became payable, she was not entitled to the proceeds of the policy. (*Pike Co. Mut. Benefit Assn.* v. *Berry,* 214 Ill. App. 316; *Modern Woodmen of America* v. *Allin,* 301 Ill. 119.)

It is not contended by petitioner that the divorce decree did anything more than take Ruth out of the class designation of "wife." But it did that. Had the policy been payable to Ruth by name, a different question might be presented, as was the case in *Begley* v. *Miller* cited by the Court of Appeals. When Ruth was divorced, without any provision made for her in the decree to take the proceeds of this policy, and she ceased to be the wife of the insured, she, being outside the designation in the beneficiary clause, had no further interest in the policy. By her marriage to Tietsort, before the death of the insured, she ceased to be entitled even to the conventional appellation of "Mrs. C. S. DeJong." So that at the time of the death of the insured she was neither his wife, nor was she "Mrs. C. S. DeJong."

IV.

The divorce of Ruth, the first wife, left no one in the class of "wife" to take the fund. The fund would then be payable to the estate of the insured. Upon his second marriage, it became payable to his second wife.

Had Carroll S. DeJong not married after his divorce from Ruth, there would have been no one in the class of

"wife" to take the fund. It would then have been payable to his Estate.

In *Novotny* v. *Acacia Mutual Life Ins. Co.*, 287 Ill. App. 361 (1936) the Appellate Court of Illinois, in a case where a designation of beneficiary had been cancelled and no new beneficiary named by the insured, held that the fund was payable to the administratrix, following certain cited Massachusetts cases. The Court say (p. 364):

> "Where no beneficiary is named in the policy the fund belongs to the insured's estate and the Executor or Administrator can collect."

The Court also followed *Sun Life Assurance Co.* v. *Williams*, 284 Ill. App. 222 (cited by the Court below in the case at bar) saying (p. 364):

> "In *Sun Life Assurance Co.* v. *Williams*, 284 Ill. App. 222, leave to appeal denied by the Supreme Court, we held that the provision for an endorsement of change of beneficiary on a policy was for the protection of the Insurance Company, which may be waived by it, and that bringing the fund into court by interpleader, waives the necessity of such endorsement."

Upon the subsequent marriage of the insured to Alberta Weber a person was provided who answered the description of the beneficiary in the policy as "Mrs. C. S. DeJong, relationship wife": and the fund became payable to her, when at the death of the insured she became his widow.

CONCLUSION.

The decision of the Court of Appeals is of great importance in Illinois, because, purporting to follow Illinois Law, it refuses to hold the *Allin* and the *Berry* cases applicable to the facts in this case. The settled law in Illinois is thereby disturbed.

Insurance Companies in Illinois in class designation cases which, under the *Allin* and the *Berry* cases, were not required to look further than the language of the policy and the identity of the claimant, as coming within the class described in the beneficiary clause at the time the policy became payable, now will be required to inquire by other evidence whether there might not be other persons who at one time or another were within the language of the beneficiary clause, and to determine whether such class designation is not in fact a specific one. Thus, an unhappy prospect of litigation is thereby opened.

The Court of Appeals by its statement that "the problem on this appeal is one of contract: to determine the intention of the insured when he applied for the policy" stated but a portion of the problem; and, contrary to the settled law in Illinois as to the testamentary nature of insurance policies, ignored the rest of the problem, which was to ascertain that intent in the light of the conditions existing at the time of the death of the insured, no change having been made in the policy. The problem was simply to determine from the uncontradicted evidence whether the intent of the insured to provide for his widow, expressed at the time of the issuance of the policy by the designation of her as "Mrs. C. S. DeJong, wife" persisted after the divorce of Ruth and his marriage to Alberta Weber. We

submit that the persistence of such an intention was conclusively shown by the fact that he asked for no change in the policy to be made after his marriage to Alberta Weber. This should have been so found by the Court of Appeals. Such a finding would have been consonant with the law in Illinois, with the language of the policy and with common sense.

We respectfully submit that the writ of certiorari should be granted in this case, and that upon a hearing the judgment of the Court of Appeals should be reversed and the cause remanded with directions to enter a judgment in favor of the petitioner, Alberta Weber DeJong, awarding the fund to her.

Respectfully submitted,

JOHN JAMES ZISKA,
Attorney for Petitioner.

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EWART HARRIS.